

1
2 MOT

3 Jason Lee Garcia
4 0036 Stampede Canyon Court
5 Las Vegas, NV 89147
6 Cell: (702) 218-8043

RECEIVED
AND FILED

EB 8 10 15 AM 11

7
8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

10 In Re:) Chapter 13 Proceedings
11 JASON LEE GARCIA) Case No.: BK-S-10-16481-lbr
12)
13 Debtor(s).)
14)

15 **MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY**
16 **RIGHTS OF SILVER STATE SCHOOLS CREDIT UNION (SECOND**
17 **MORTGAGE) PURSUANT TO 11 U.S.C. 506(a) AND 1322**

18 Comes now the Debtor, **JASON L. GARCIA** (hereinafter the "debtor"),
19 and respectfully moves this Court pursuant to 11 U.S.C. 506(a), and 1322, and
20
21 Bankruptcy Rules 3012 and 9014.

22
23 **STATEMENT OF FACTS**
24

25 1. Debtor filed the instant Chapter 13, Case Number **10-16481** on

26
27 **APRIL 14, 2010.**
28

1
2. As of the date of filing, debtor owned real property located at

3 **10036 STAMPEDE CANYON COURT, LAS VEGAS, NEVADA 89147**

4
5 (hereafter the "Subject Property").

6
7 3. Debtor has obtained from Zillow that places the value of the
8 subject property at **\$181,000.**

9
10 4. At the time of filing the instant petition, the Subject Property was
11 subject to the following liens:

12
13 **MOREEQUITY INC. (First Mortgage): \$399,900.00**

14
15 **SILVER STATE SCHOOLS CREDIT UNION (Second**

16
17 **Mortgage): \$17,532.00**

18
19 5. Therefore, on the date the instant bankruptcy was filed, no equity
20 existed in the Subject Property above the claims of **SILVER STATE SCHOOLS**
21 **CREDIT UNION.**

22
23 6. **SILVER STATE SCHOOLS CREDIT UNION's** claim was wholly
24 unsecured on the petition date and if the Subject Property was sold at auction
25 **SILVER STATE SCHOOLS CREDIT UNION** would receive nothing.

26
27 7. Accordingly the debtor requests that Your Honor find the **SILVER**
28 **STATE SCHOOLS CREDIT UNION's** claim is unsecured and should be

1
2 reclassified as a general unsecured claim to receive pro rata with other general
3 unsecured creditors through the debtor's Chapter 13 plan.
4

5 **LEGAL ARGUMENT**
6

7 In *In re Zimmer*, 313 F.3d 1220 (9th Cir.2002), the Court stated that a
8 wholly unsecured lien holder's claim can be modified and reclassified as a general
9 unsecured claim pursuant to 11 U.S.C. 506(a), despite the anti-modification
10 language in 1322(b)(2). Specifically, the Court held:
11

12
13 Section 506(a) divides creditors' claims into "secured...claims" and
14 "unsecured claims." Although the conventional interpretation of
15 "secured" might include any claim in which the creditor has a security
16 interest in the debtor's property, 506(a) makes clear that the status of
17 a claim depends on the valuation of the property. An allowed claim of
18 a creditor secured by a lien on property in which the estate has an
19 interest ... is a secured claim to the extent of the value of such
20 creditor's interest in the estate's interest in such property ... and is an
21 unsecured claim to the extent that the value of such creditor's
22 interest ... is less than the amount of such allowed claim. To put it
23 more simply, a claim such as a mortgage is not a "secured claim" to
24 the extent that it exceeds the value of the property that secures it.
25 Under the Bankruptcy Code, "secured claim" is thus a term of art; not
26 every claim that is secured by a lien on property will be considered a
27 "secured claim." Here, it is plain that **SILVER STATE SCHOOLS**
28 **CREDIT UNION**'s claim for the repayment of its loan is an
unsecured claim, because its deed of trust is junior to the first deed of
trust, and the value of the loan secured by the first deed of trust is
greater than the value of the house.

Accordingly, since **SILVER STATE SCHOOLS CREDIT UNION'S**

1
2
3 second mortgage claim is wholly unsecured (in that there is no extant equity above
4 the first mortgage in the Subject Property), the claim should be reclassified by this
5 Court as a general unsecured claim and share in whatever pro rate distribution is
6 being received. **SILVER STATE SCHOOLS CREDIT UNION** should also be
7 stripped of its secured rights under Nevada State Law since no maintainable
8 security interest in the subject property exists.

12 Furthermore, the Debtor is not required to file an adversary proceeding to
13 strip the lien of its secured status. Debtor may "strip off" **SILVER STATE**
14 **SCHOOLS CREDIT UNION**'s consensual lien by motion. See *In re Willaims*,
15 166 B.R. 615 (Bankr.E.D.Va1994), *In re Fuller* 255 B.R. 300
16
17 (Bakr.W.D.Mich.2000), *In re Hoskins*, 262 B.R. 693 (Bankr.E.D.Mich.2001), *In re*
18
19 *King*, 290 B.R. 641 (Bankr.C.D.III.2003), *In re Millspaugh*, 302 B.R. 90
20
21 (Bankr.D.Idaho 2003), *Dickey v. Ben. Fin. (In re Dickey)* 293 B.R. 360
22
23 (Bankr.M.D.Pa.2003), *In re Hill*, 304 B.R. 800 (Bankr.S.D.Ohio 2003); *In re*
24
25 *Sadala* 294 B.R. 180 (Bankr.M.D.Fla.2003), *In re Fisher*, 289 B.R. 544
26
27 (Bankr.W.D.N.Y.2003), *In re Robert*, 313 B.R. 545 (Bankr.N.D.N.Y.2004), *In re*
28 *Bennett*, 312 B.R. 832 (Bankr.W.D.Ky.2004).

1
2 **CONCLUSION**
3

4 Debtor respectfully requests that the court:

5 1. Determine that the first mortgage on the subject property far exceeds
6 the value;

7 2. Determine that the **SILVER STATE SCHOOLS CREDIT UNION**

8
9 **second** mortgage claim is a wholly unsecured claim and strip the lien from the
10 subject property pursuant to 11 U.S.C. Section 506(a);
11

12 3. Reclassify the secured claim filed by **SILVER STATE SCHOOLS**

13
14 **CREDIT UNION** as a general unsecured claim to be paid pro rata in the general
15 unsecured pool of Debtors' Chapter 13 Plan.
16

17 4. For such other and further relief which the Court deems just and

18 proper.

20 Dated: 2/8/11

21 2/27/10

22 
23 JASON L. GARCIA
24 Debtor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
EXHIBIT 1
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Map US Nevada Clark City

Views: 20

Hey Android owners! Shop on-the-go with the Zillow Android App.

10036 Stampede Canyon Ct

Zestimate®: **\$181,000**
Value Range: \$163K – \$212K

Monthly payment:

See current rates on Zillow **\$722**

Check your 2010 Credit Score

Bedrooms:	4
Bathrooms:	2.5
Sqft:	2,078
Lot size:	8,712 sq ft / 0.20 acres
Property type:	Single Family
Year built:	2001
Parking type:	Garage - Attached
Cooling system:	Central
Heating system:	Forced air
Fireplace:	--
Last sold:	April 04 2005



No photos available for this property

Description

This 2078 square foot single family home has 4 bedrooms and 2.5 bathrooms. It is located at 10036 Stampede Canyon Ct Las Vegas, Nevada. This home is in the Clark School District. The nearest schools are Keith C. & Karen W. Hayes Elementary School, Victoria Fertitta Middle School and Spring Valley High School.

More facts

[Post for sale/rent](#)

[Save](#)

[Share](#)

[E-mail me](#)

[Edit](#)

[Print](#)

Charts and Data

	Value	Range	30-day change	\$/sqft	Last updated
Zestimate®	\$181,000	\$163K – \$212K	-\$2,500	\$87	11/27/2010
My estimate	Create estimate				
Owner Comment	Post a comment				